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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/767,191

01/30/2004

Anthony Bruce

APRE0003

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7590

08/19/2010

King and Spalding LLP  
1700 Pennsylvania Ave, NW  
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Washington, DC 20006

EXAMINER

ANDERSON, FOLASHADE

ART UNIT

PAPER NUMBER

3623

NOTIFICATION DATE

DELIVERY MODE

08/19/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/767,191	<b>Applicant(s)</b> BRUCE ET AL.	
	<b>Examiner</b> FOLASHADE ANDERSON	<b>Art Unit</b> 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05/19/2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 and 40-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This non-final office action is in response to Applicant's submission filed on 05/19/2010.

#### ***Claim Status***

2. Currently, claims 1-42 are pending. Claims 1-23 and 40-42 are withdrawn from consideration. Claims 24 and 33 are amended.

#### ***Response to Amendment***

3. Applicant's amendments to claim 33 are sufficient to overcome the 35 USC § 112, second paragraph rejection set forth in the previous office action.

#### ***Response to Arguments***

4. Applicant's arguments filed with respect to the 35 USC § 103 have been fully considered but they are not persuasive. Applicant argues with respect to claims 24 and 33:

a. "Harhen fails to teach a business initiative, such as a new display in a business location using test sites and non-test sites," with respect to claim 24, remarks p. 14.

b. "[N]one of [the] citations, nor the remainder of Pednault, teach the measurement of a business initiative using test sites and non-test sites," with respect to claim 24, remarks p. 14-15

- c. “Harhen and Pednault fail to teach with respect to claim 32 “wherein the non-test group sites includes a set of control group sites and wherein the list of the attributes ranked based on each attribute's impact on the test site performance values is generated by the server based on comparisons between test site fragments and corresponding control group site fragments, wherein each fragment is generated by the server based on each respective site's attribute value and performance value” remarks p.15.
- d. Pednault fails to teach “the control group is split into fragments and the test fragments are compared to similarly situated control fragments for any particular attribute being analyzed” with respect to claims 32 and 36, remarks p. 15.
5. With respect to Applicant’s argument 4(a) it is noted that the argument is directed towards new amended claim language, which have been full addressed in the updated rejection.
6. In response to Applicant’s arguments 4(b) respectfully the Examiner disagrees with Applicant’s accretion, and points out that with respect to the argument that references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., “measurement of a business initiative using test sites and non-test sites “) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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7. Applicant's arguments, 4(c) and 4(d) with respect to the rejection(s) of claim(s) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Frye et al (US Publication 2001/0032105) and Hayes-Roth (2005/0075921 A1)

8.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 24 recites the limitation "the initiative" in line 2 of claim 24 at page 8. It is unclear if these imitative is the same as the business initiative. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 24-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harhen (US Patent 5,406,477) in view of Frye et al (US Publication 2001/0032105) and Hayes-Roth (2005/0075921 A1)

13. Claims 24 and 33

Harhen teaches a method for analyzing a business initiative for a business network including business locations, the method comprising:

- receiving, from a server, a list of attributes ranked based on each attribute's impact on performance values associated with test sites during the test period **(Harhen col. 5, lines 4-7 and col. 8, lines 17-20);**  
configuring a model to predict the performance value of the sites based on the ranked list of attributes **(Harhen col. 8, lines 63-68);**
- instructing the server to execute the model for the test sites **(Harhen col. 14, lines 59-68);**
- receiving results of the executed model, wherein the results include quantitative measures of the model's ability to accurately predict the performance levels of the test sites **(Harhen col. 41, lines 15-20);**

Harhen does not expressly teach:

- attributes are associated with business locations at test sites that have implemented the business initiative
- instructing the server to apply the model to business locations at non-test group sites that have not implemented the initiative to predict the performance levels of the non-test group sites based on a determination that the model accurately predicts the performance levels of the test sites; and
- receiving a list of non-test group sites ranked based on each non-test group site's predicted performance level.

Frye teaches attributes are associated with business locations at test sites that have implemented the business initiative (**Frye par. 0029 and 0035**) in an analogous art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Harhen the attributes are associated with business locations at test sites that have implemented the business initiative as taught by Frye since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Hayes-Roth teaches in the analogous art of open community modeling

- instructing the server to apply the model to business locations at non-test group sites that have not implemented the initiative to predict the performance levels of the non-test group sites based on a determination that the model

accurately predicts the performance levels of the test sites (**Hayes-Roth par. 0039 and 0076**);

- receiving a list of non-test group sites ranked based on each non-test group site's predicted performance level (**Hayes-Roth par. 0074**).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Harhen and Frye the features as taught by Hayes-Roth since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

With respect to claim 33 which is the system for implementing the method of claim 24 and is essentially the same as the method it is rejected for the same reasoning given above.

14. Claims 25 and 34

Harhen, Frye and Hayes-Roth teach the method of claim 24, further comprising Frye further teaches:

- implement the business initiative (**Frye par. 0029 and 0035**)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Harhen and Hayes-Roth the implement the business initiative as taught by Frye since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the



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same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

- selecting a subset of the non-test group sites to based on the ranked list of those sites **(Hayes-Roth par. 0074)**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Harhen and Frye the selecting a subset of the non-test group sites to based on the ranked list of those sites as taught by Hayes-Roth since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

With respect to claim 34 which is the system for implementing the method of claim 25 and is essentially the same as the method it is rejected for the same reasoning given above.

15. Claim 26

Harhen, Frye and Hayes-Roth teach the method of claim 24, wherein configuring the model includes: selecting the model from a list of models provided by the server; and selecting one or more parameters for the selected model **(Harhen col. 20, line 24 and col. 37, lines 7-15)**.

16. Claims 27 and 39

Harhen, Frye and Hayes-Roth teach the method of claim 24, wherein receiving results of the executed model further includes:

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- reconfiguring the model with at least one new parameter based on a determination that the model does not accurately predict the performance levels of the test sites (**Harhen col. 18, lines 40-43**) and
- instructing the server to execute the reconfigured model for the test sites(**Harhen col. 6, lines 44-63**).

With respect to claim 39 which is the system for implementing the method of claim 27 and is essentially the same as the method it is rejected for the same reasoning given above.

17. Claims 28 and 38

Harhen, Frye and Hayes-Roth teach the method of claim 27, further comprising: repeating the reconfiguring and executing the reconfigured model until the quantitative measure reflect that the model accurately predicts the performance levels of the test sites(**Harhen col. 6, lines 44-63**).

With respect to claim 38 which is the system for implementing the method of claim 28 and is essentially the same as the method it is rejected for the same reasoning given above.

18. Claims 29 and 37

Harhen, Frye and Hayes-Roth teach the method of claim 24, wherein configuring the model includes: selecting a number of the ranked attributes that the model should consider when executing (**Harhen col. 5, lines 4-7 and col. 8, lines 17-20**).

With respect to claim 37 which is the system for implementing the method of claim 29 and is essentially the same as the method it is rejected for the same reasoning given above.

19. Claim 30

Harhen, Frye and Hayes-Roth teach the method of claim 24, wherein the quantitative measures includes a ranked list of selected attributes that the model considered during its execution and data values assigned to each of the selected attributes by the model (**Harhen col. 17, lines 23-27**).

20. Claim 31

Harhen, Frye and Hayes-Roth teach the method of claim 30, wherein the data values includes a coefficient data value for a mathematical function used by the model to generate the results (**Harhen col. 17, lines 5-15**).

21. Claims 32 and 36

Harhen, Frye and Hayes-Roth teach the method of claim 24, wherein the list of the attributes ranked based on each attribute's impact on the test site (**Harhen col. 17, lines 23-27**).

Harhen does not teach wherein the non-test group sites includes a set of control group sites and performance values is generated by the server based on comparisons between test site fragments and corresponding control group site fragments, wherein each fragment is generated by the server based on each respective site's attribute value and performance value.

Hayes Roth teaches wherein the non-test group sites includes a set of control group sites and performance values is generated by the server based on comparisons between test site fragments and corresponding control group site fragments, wherein each fragment is generated by the server based on each respective site's attribute value and performance value **(Hayes-Roth par. 0076)**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Harhen and Frye the the non-test group sites includes a set of control group sites and performance values is generated by the server based on comparisons between test site fragments and corresponding control group site fragments, wherein each fragment is generated by the server based on each respective site's attribute value and performance value as taught by Hayes-Roth since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

With respect to claim 36 which is the system for implementing the method of claim 32 and is essentially the same as the method it is rejected for the same reasoning given above.

22. Claim 35

Harhen, Frye and Hayes-Roth teach the method of claim 34, wherein the user operates a client remotely located from the system.

Official notice is taken that it was old and well known in the art at the time the invention was made to allow a user to remote access to a system for operating purposes.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Harhen and Pednault the very old and well known feature of in the user operates a client remotely located from the system since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

### ***Conclusion***

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Turner et al (US Publication 2004/0054511) teaches modeling location information. Zimmerman et al (US Publication 2003/0177055 A1) teaches comparing marketing data.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FOLASHADE ANDERSON whose telephone number is (571)270-3331. The examiner can normally be reached on Monday through Thursday 8:00 am to 5:00 pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Folashade Anderson/  
Examiner, Art Unit 3623

/Andre Boyce/  
Primary Examiner, Art Unit 3623